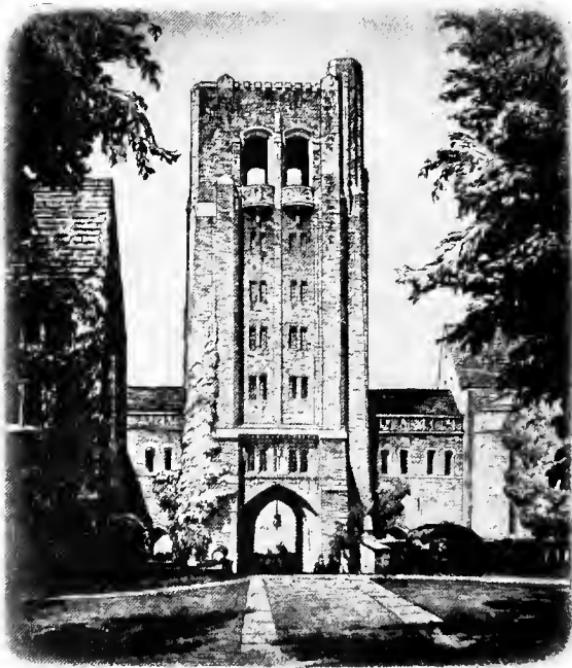


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QUASI-CONTRACTS—SYNOPSIS AND  
SELECTED CASES.

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E. H. WOODRUFF.

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*David*  
E. H. WOODRUFF.  
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# QUASI-CONTRACTS—SYNOPSIS AND SELECTED CASES.<sup>1</sup>

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E. H. WOODRUFF.

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## I.

### RECOVERY UPON A RECORD.

(K. T. p. 16.)

1. *Bank v. Vanvoorhis*, 6 S. D. 548; 62 N. W. 378.
2. *State v. McGuire*, 42 Minn. 27; 43 N. W. 687 (last ¶ of opinion).
3. *Bodine v. Commonwealth*, 24 Pa. St. 69 (2d ¶ of opinion).

## II.

### RECOVERY UPON A STATUTORY, OR OFFICIAL, OR CUSTOMARY DUTY. (K. T. pp. 16-19.)

4. *Wood v. Ayres*, 39 Mich. 345; 33 A. R. 396. (Upon the 2d point).
5. *Augner v. Mayor*, 14 App. D. 461.
6. *Willard v. Co.*, 48 Hun, 402; 16 N. Y. S. R. 497; 1 N. Y. Suppl. 588. (Judge Learned's opinion).
7. *Wood v. R'y*, 32 Wis. 398.
8. *Dickinson v. Winchester*, 4 Cush. 114; 50 A. D. 760.
9. *Nelson v. Kerr*, 59 N. Y. 224.
10. *Bailey v. Butterfield*, 14 Me. 112.

## III.

### RECOVERY UPON THE DOCTRINE THAT A PERSON SHALL NOT BE ALLOWED TO ENRICH HIMSELF UNJUSTLY AT THE EXPENSE OF ANOTHER. (K. T. pp. 19-25.)

#### A. Considered with reference to the law of true contract.

##### I. In general.

11. *Columbus v. Gaffney*, 65 Oh. 104; 61 N. E. 152.
12. *Eddy v. Smith*, 13 Wend. 489.

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<sup>1</sup> The abbreviation K. T. refers to Keener's *Treatise on the Law of Quasi-Contracts*; K. refers to Keener's *Cases on Quasi-Contracts*.

II. Where there is no agreement through the process of offer and acceptance.

a. *Benefits conferred without request.*

i. Intentionally. (K. T. Ch. vii.)

13. Patterson v. Patterson, 59 N. Y. 574; 17 A. R. 384.
14. Gleason v. Warner, 78 Minn. 405; 81 N. W. 206.
15. Cunningham v. Reardon, 98 Mass. 538; 96 A. D. 670.
16. Quin v. Hill, 4 Demarest, 69.
17. Savage v. McCorkle, 17 Ore. 42; 21 Pac. 444 (3d point).
18. Forsyth v. Ganson, 5 Wend. 558; 21 A. D. 241.
19. Earle v. Coburn, 130 Mass. 596; 2 K. 281.
20. Chase v. Corcoran, 106 Mass. 286; 2 K. 276.
21. Beckwith v. Frisbie, 32 Vt. 559.
22. Zottman v. San Francisco, 20 Cal. 96, 107; 81 A. D. 96.
23. Bartholomew v. Jackson, 20 Johns. 28; 11 A. D. 237; 2 K. 276; H. & W. 14.
24. Manhattan Fire Alarm Co. v. Weber, 22 Misc. 729; 50 N.Y. S. 42.
25. Barnes v. Shoemaker, 112 Ind. 512; 14 N. E. 367.
26. Boulton v. Jones, 2 H. & N. 564; 27 L. J. R. 117; 2 K. 268.
27. United States v. Pac. R. R. 120 U. S. 227; 2 K. 336.
28. Brandner v. Krebs, 54 Ill. App. 652. (For other cases, besides this case, upon exceptions of necessity, see the topics, Liability of Husband, Infant, Insane Person, and Parent, for necessities, in Woodruff's Cases on Domestic Relations and Persons. See also § 231 of Bishop on Contracts.)

ii. Unintentionally.

Improvements put upon property of another by mistake. (K. T. Ch. viii, § 3.)

29. Williams v. Gibbes, 20 How. (U. S.) 535; 2 K. 300.
30. Parsons v. Moses, 16 Ia. 440.
31. Thomas v. Evans, 105 N. Y. 601; 59 A. R. 519.
32. Bryant v. Clark, 45 Vt. 483.
33. Isle Royal Mining Co. v. Hertin, 37 Mich. 332; 26 A. R. 520; 2 K. 319.
34. Gaskins v. Davis, 115 N. C. 85; 20 S. E. 188; 44 A. S. R. 439; 25 L. R. A. 813.

Money paid to use of defendant to prevent sale of property. (K. T. Ch. ix, § 1.)

35. Irvine v. Angus, 93 Fed. 629; 35 C. C. A. 501.
36. Nichols v. Bucknam, 117 Mass. 488.





Money paid to use of defendant to discharge obligation of defendant. (K. T. Ch. ix, § 2.)

37. Ticonic Bank v. Smiley, 27 Me. 225; 46 A. D. 593.
38. Sargent v. Currier, 49 N. H. 310; 6 A. R. 524.
39. Van Santen v. Oil Co. 81 N. Y. 171.
40. McGhee v. Ellis, 4 Litt. (Ky.) 244; 14 A. D. 124.
41. Calvert v. Aldrich, 99 Mass. 74; 96 A. D. 693; Finch's Cases on Prop. 973.
42. Norton v. Coons, 3 Denio 130, (later report in 6 N. Y. 33 need not be read.)
43. Norris v. Churchill, 20 Ind. App. 668; 51 N. E. 104.
44. Dedman v. Williams, 2 Ill. 154.

b. *Benefits conferred at request but in the absence of contract.*

i. As gratuity with knowledge of all the facts. (K. T. Ch. vi, § 1.).

45. Potter v. Carpenter, 76 N. Y. 157.
46. Hewitt v. Anderson, 56 Cal. 476; 38 A. R. 65.
47. Collyer v. Collyer, 113 N. Y. 442; 21 N. E. 114.
48. Webster v. Drinkwater, 5 Greenl. 319; 17 A. D. 238.
49. Fuller v. Mowry, 18 R. I. 424; 28 Atl. 606.
50. Disbrow v. Durand, 54 N. J. L. 343; 33 A. S. R. 678; 24 Atl. 545. (Especially upon burden of proof.)
51. Osier v. Hobbs, 33 Ark. 215.
52. Lafontaine v. Hayhurst, 89 Me. 388; 36 Atl. 623; 56 A. S. R. 430.
53. Thomas v. Shooting Club, 121 N. C. 238; 28 S. E. 293.

ii. As gratuity, under mistake of material fact. (K. T. Ch. vi, § 2.).

54. Burrows v. Ward, 15 R. I. 346; 5 Atl. 500.
55. Shepherd v. Young, 8 Gray 152; 69 A. D. 242.
56. Uri v. Johnston, 3 Pen. & W. 212.
57. Hickam v. Hickam, 46 Mo. App. 496.
58. Abbot v. Freemont, 34 N. H. 432.
59. Cooper v. Cooper, 147 Mass. 370; 9 A. S. R. 721; 2 K. 358.

c. *Mistake as to the terms of a contract.*

- 59a. McDonald v. Lynch, 59 Mo. 350.

### III. Statute of Frauds—Contract unenforceable.

- a. *Where the plaintiff in default relies upon the Statute of Frauds.* (K. T. Ch. iv, § 2; Ch. viii, § 2.)
  60. Thomas v. Brown, L. R. 1 Q. B. D. 714; 35 L. T. R. 237; 24 W. R. 821; 2 K. 237.
  61. Philbrook v. Belknap, 6 Vt. 383; 2 K. 243.
  62. Abbott v. Draper, 4 Den. 51.
  63. King v. Welcome, 5 Gray, 41; 2 K. 251.

64. *Hoskins v. Mitcheson*, 14 U. C. Q. B. 551; 2 K. 254.  
65. *In re Williams' Estate*, 106 Mich. 490; 64 N. W. 490.

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66. *Rainer v. Huddleston*, 4 Heisk. 223; 2 K. 306.  
67. *Farnam v. Davis*, 32 N. H. 302.  
68. *Gillet v. Maynard*, 5 Johns. 85; 2 K. 284; 4 A. D. 329.  
b. *Where the defendant in default relies upon the Statute of Frauds*. (K. T. Ch. v, § 2; Ch. viii, § 1.)  
69. *Miller v. Roberts*, 169 Mass. 134; 47 N. E. 585. (Opinion only.)  
70. *Gay v. Mooney*, 67 N. J. L. 27; 50 Atl. 596.  
71. *Smith v. Smith*, 28 N. J. L. 208; 78 A. D. 49; 1 K. 494.  
72. *Day v. R. R.*, 51 N. Y. 583; 1 K. 503.  
73. *Dix v. Marcy*, 116 Mass. 416; 1 K. 509.  
74. *Banker v. Henderson*, 58 N. J. L. 26; 32 Atl. 700.  
75. *Parker v. Tainter*, 123 Mass. 185; 1 K. 511.  
76. *Hawley v. Moody*, 24 Vt. 603; 1 K. 491.  
77. *Williams v. Benis*, 108 Mass. 91; 11 A. R. 318; 1 K. 500.  
78. *Reynolds v. Reynolds*, 74 Vt. 463; 52 Atl. 1036.  
79. *Reed v. McConnell*, 133 N. Y. 425; 45 N. Y. S. R. 227.

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80. *Albea v. Griffin*, 2 Dev. & Bat. Eq. 9; 2 K. 290.  
81. *Mathews v. Davis*, 6 Humph. 324; 2 K. 297.  
82. *Miller v. Tobie*, 41 N. H. 84.  
83. *Shreve v. Grimes*, 4 Litt. (Ky.) 220; 14 A. D. 117; 2 K. 286.  
84. *Orear v. Botts*, 3 B. Mon. 360.  
85. *Smith v. Smith*, (case 71 above).  
86. *Smith v. Hatch*, 46 N. H. 146.

**IV. Capacity of parties—Restoration of consideration or recovery for benefits conferred where the contract is void or voidable for lack of contractual capacity.**

a. *Corporations*.

87. *Central Trans. Co. v. Pullman Co.* 139 U. S. 24; 11 Sup. Ct. 478, (on this point, head note and latter part of opinion).

88. *Bath Gas Light Co. v. Claffy*, 151 N. Y. 24; 45 N. E. 390.

b. *Infants, Insane Persons*. (Discussed in the course on Persons.)  
c. *Married Women*.

89. *Smout v. Ilbery*, 10 M. & W. 1; 12 L. J. Ex. 357; 1 K. 190.





90. Kneil v. Egleston, 140 Mass. 202; 2 K. 356.  
91. Gwin v. Smurr, 101 Mo. 550; 14 S. W. 731.

**V. Mistake.**

a. *Recovery of money paid under mistake of fact.* (K. T. Ch. ii.)

i. General principles.

92. Wabaunsee Co. v. Walker, 8 Kan. 431.  
93. Buffalo v. O'Malley, 61 Wis. 255; 50 A. R. 137.  
94. Lemans v. Wiley, 92 Ind. 436.

Compromise or settlement. (K. T. p. 30 *et seq.*)

95. Troy v. Bland, 58 Ala. 197.  
96. McArthur v. Luce, 43 Mich. 435; 38 A. R. 204.  
97. Stuart v. Sears, 119 Mass. 143; 1 K. 300.  
98. Wheadon v. Olds, 20 Wend. 174; 1 K. 298.  
99. Rheel v. Hicks, 25 N. Y. 289.  
100. Riegel v. Ins. Co. 153 Pa. 134; 19 L. R. A. 166; 25 Atl. 1070.

101. Sears v. Grand Lodge, 163 N. Y. 374; 57 N. E. 618.

Effect of payor's knowledge or belief. (K. T. pp. 27, 31.)

102. Guild v. Baldridge, 2 Swan, 295.  
103. Windbiel v. Carroll, 16 Hun, 101.  
104. Nat. Life Ins. Co. v. Jones, 59 N. Y. 649. (Opinion in 1 T. & C. 466.)

Mistake, but not against conscience for defendant to retain. (K. T. pp. 43 *et seq.*)

105. Kingston Bank v. Eltinge, 66 N. Y. 625.  
106. Levy v. Terwilliger, 10 Daly, 194.  
107. Buel v. Boughton, 2 Den. 91; 1 K. 411.

Mistake, but recovery would throw loss upon defendant. (K. T. pp. 59 *et seq.*)

108. Grier v. Huston, 8 S. & R. 402; 11 A. D. 627.  
109. Newall v. Tomlinson, L. R. 6 C. P. 405; 25 L. T. R. 382; 1 K. 458.  
110. Corn Exch. Bank v. Bank, 91 N. Y. 74 (1st point).  
111. Carson v. McFarland, 2 Rawle, 118; 19 A. D. 627.  
112. Phetteplace v. Bucklin, 18 R. I. 297; 27 Atl. 211.  
113. Walker v. Conant, 69 Mich. 321; 13 A. S. R. 391; 37 N. W. 292.

Mistake, but plaintiff negligent. (K. T. pp. 70 *et seq.*)

114. Appleton Bank v. McGillivray, 4 Gray 518; 64 A. D. 92.

Mistake, but defendant negligent. (K. T. pp. 71 *et seq.*)

115. Union Bank v. Bank, 3 Mass. 74.

Mistake and equal fault. (K. T. pp. 70 *et seq.*)

116. Koontz v. Bank, 51 Mo. 275.

Burden of proof as to alteration of position. (K. T. pp. 73 *et seq.*)

117. *Mayer v. New York*, 63 N. Y. 455; 1 K. 283.

Whether action contemplates recovery of *money*. (K. T. p. 139.)

118. *Brundage v. Portchester*, 102 N. Y. 494.

119. *Tinslar v. May*, 8 Wend. 561.

Necessity of notice to or demand upon the defendant. (K. T. pp. 139 *et seq.*)

120. *Gillett v. Brewster*, 62 Vt. 312; 20 Atl. 105.

121. *Sharkey v. Mansfield*, 90 N. Y. 227; 43 A. R. 161.

Interest on money paid by mistake. (K. T. pp. 154 *et seq.*)

122. *Leach v. Vining*, 18 N. Y. Supp. 822; 45 N. Y. S. R. 170.  
(On this point only.)

Mistake as to title of vendor. (K. T. pp. 125 *et seq.*)

123. *Whittemore v. Farrington*, 76 N. Y. 452.

124. *Earle v. Bickford*, 6 Allen, 549; 83 A. D. 651.

125. *Phillips v. Hudson*, 31 N. J. L. 143.

126. *Moore v. Williams*, 115 N. Y. 586; 12 A. S. R. 844; 22 N. E. 233.

127. *Steele v. Sanchez*, 80 Ia. 507; 45 N. W. 870.

128. *Coolidge v. Brigham*, 1 Met. 547.

Overpayment by mistake—excess of contract rate. (K. T. p. 120.)

129. *Calkins v. Griswold*, 11 Hun, 208.

130. *Holtz v. Schmidt*, 59 N. Y. 253.

Overpayment by mistake—the contract based on mistake. (K. T. p. 122.)

131. *Howes v. Barker*, 3 Johns. 506; 3 A. D. 526.

132. *Paine v. Upton*, 87 N. Y. 327; 41 A. R. 371.

Mistake as to existence of subject matter of contract. (K. T. pp. 130 *et seq.*)

133. *Wood v. Sheldon*, 42 N. J. L. 421; 36 A. R. 523.

134. *Martin v. McCormick*, 8 N. Y. 331.

135. *Moore v. DesArts*, 1 N. Y. 359.

136. *Brewster v. Burnett*, 125 Mass. 68; 28 A. R. 203.

Mistake as to the genuineness of negotiable instrument. (K. T. pp. 154 *et seq.* note.)

137. *Bank v. Bank*, 10 Vt. 141; 33 A. D. 188.

138. *Dedham Bank v. Bank*, 177 Mass. 392; 83 A. S. R. 286; 59 N. E. 62.

139. *Germania Bank v. Boutell*, 60 Minn. 189; 62 N. W. 327; 51 A. S. R. 519 (from 3d ¶ of prevailing opinion to end of that opinion.)

140. *Wilson v. Alexander*, 4 Ill. 392.

141. *Riverside Bank v. Bank*, 74 Fed. 276; 38 U. S. App. 674.

142. *Bank of Commerce v. Union Bank*, 3 N. Y. 230; 1 K. 236.





Money lent under mistake as to agent's authority to borrow. (K. T. pp. 330 *et seq.*)

143. Kelly v. Lindsey, 7 Gray, 287; 1 K. 202.
144. White River Township v. Dorrell, 26 Ind. App. 538; 59 N. E. 867.
145. First Church v. Caughey, 85 Pa. 271; 1 K. 205.
146. Billings v. Monmouth, 72 Me. 174; 1 K. 209.
147. Fay v. Slaughter, 194 Ill. 157; 62 N. E. 592.
148. Reid v. Rigby Co. [1894] 2 Q. B. 40; 10 T. L. R. 418; 63 L. J. (C. L.) 451.

Mistake as to part of the consideration. (K. T. pp. 124, 130).

149. Rand v. Webber, 64 Me. 191.
150. Smart v. Gale, 62 N. H. 62

b. *Recovery of money paid under mistake of law.* (K. T. pp. 85 *et seq.*)

151. Clarke v. Dutcher, 9 Cow. 674; 1 K. 114.
152. Fairbanks v. Mann, 19 R. I. 499; 34 Atl. 1112.
153. Doll v. Earle, 59 N. Y. 638.
154. Frederick v. Donglass, 96 Wis. 411; 71 N. W. 798. (Judge Winslow's opinion.)
155. Camden v. Green, 54 N. J. L. 591; 33 A. S. R. 686; 25 Atl. 357.
156. Cahaba v. Burnett, 34 Ala. 400.
157. City of Helena v. Dwyer, 65 Ark. 155; 45 S. W. 349.
158. Buckley v. N. Y. 30 App. D 463; 52 N. Y. Suppl. 452.
159. Pitcher v. Plank Road, 10 Barb. 436; 1 K. 162.
160. Hemphill v. Moody, 64 Ala. 468; 1 K. 167.
161. Needles v. Burk, 81 Mo. 569.

Mistake as to foreign law.

162. Haven v. Foster, 9 Pick. 112; 19 A. D. 353; 1 K. 123.

Money paid by mistake to officer of the court.

163. Gillig v. Grant, 23 App. D. 596; 49 N. Y. Supp. 78.

c. *Recovery for benefits conferred under mistake as to the existence of a contract.* (K. T. Ch. vi, § 3.)

164. Van Deusen v. Blum, 18 Pick. 229; 29 A. D. 582; 1 K. 197.
165. Bond v. Aitkin, 6 W. & S. 165; 40 A. D. 550; 1 K. 199.
166. Turner v. Webster, 24 Kan. 38; 36 A. R. 251; 2 K. 350.
167. Concord Co. v. Ferrin, 71 N. H. 33; 51 Atl. 283; 93 A. S. R. 496.
168. *In re* Northumberland Ave. Hotel Co. L. R. 33 Ch. D. (C. A.) 16; 54 L. T. 777.
169. Sherman v. Kitsmiller, 17 S. & R. 45.
170. Hart v. Georgia R. R. 101 Ga. 188; 28 S. E. 637.

**VI. Duress.**

a. *Duress of Property.* (K. T. Ch. xi, § 1.)

171. Chase v. Dwinal, 7 Greenl. 134; 20 A. D. 352.
172. Brumagim v. Tillinghast, 18 Cal. 265; 79 A. D. 176.
173. Harmony v. Bingham, 12 N. Y. 99; 62 A. D. 142.
174. Scholey v. Mumford, 60 N. Y. 498; 2 K. 558.
175. De La Cuesta v. Ins. Co. 136 Pa. 62; 20 Atl. 505.
176. Joannin v. Ogilvie, 49 Minn. 564; 32 A. S. R. 581; 52 N. W. 217.

177. Richmond v. Steamboat Co., 87 N. Y. 240.
178. Van Dyke v. Wood, 60 App. D. 208; 70 N. Y. Supp. 324.

b. *Money paid to avoid injury to business.* (K. T. Ch. xi, § 2.)

179. Panton v. Water Co., 50 Minn. 175; 36 A. S. R. 635; 52 N. W. 527.
180. Guetzkow v. Breese, 96 Wis. 591; 65 A. S. R. 83; 72 N. W. 45.
181. Carew v. Rutherford, 106 Mass. 1; 8 A. R. 287; 2 K. 550.
182. Solinger v. Earle, 82 N. Y. 393.
183. Regan v. Baldwin, 126 Mass. 485; 30 A. R. 689.

c. *Interest paid on usurious contract.* (K. T. Ch. xi, § 3.)

184. Wheaton v. Hibbard, 20 Johns. 290; 11 A. D. 284.
185. Marvin v. Mandell, 125 Mass. 562.
186. Cummings v. Knight, 65 N. H. 202; 23 Atl. 148.

d. *Money paid to induce performance of a duty.* (K. T. Ch. xi, § 4.)

187. Cook v. R. R., 81 Ia. 551; 25 A. S. R. 512.
188. Killmer v. R. R., 100 N. Y. 395; 53 A. R. 194; 3 N. E. 293.
189. Pingree v. Gas Co., 107 Mich. 156; 65 N. W. 6.
190. Potomac Coal Co. v. R. R., 38 Md. 226.
191. Amer. SS. Co. v. Young, 89 Pa. 186; 33 A. R. 748.
192. Monongahela Co. v. Wood, 194 Pa. 47; 45 Atl. 73.
193. Chicago & Alton R. R. v. Coal Co., 79 Ill. 121.

e. *Duress of person.* (K. T. Ch. xi, § 5.)

194. Galusha v. Sherman, 105 Wis. 263; 81 N. W. 495; 47 L. R. A. 417.
195. Puckett v. Roquemore, 55 Ga. 235.
196. Adams v. Bank, 116 N. Y. 606; 15 A. S. R. 447.
197. Haynes v. Rudd, 102 N. Y. 372; 55 A. R. 815.

**VII. Illegal contract.**

a. *Plaintiff in default.* (K. T. Ch. iv, § 4.)

198. Knowlton v. Spring Co., 57 N. Y. 518.





199. Spring Co. v. Knowlton, 103 U. S. 49.  
200. Tracy v. Talmadge, 14 N. Y. 162; 67 A. D. 132; 2 K. 30.  
201. Harse v. Assur. Co. [1904], 1 K. B. 558; 20 T. L. R. 264; 90 L. T. R. 245.  
202. White v. Franklin Bank, 22 Pick 181.  
203. Stacy v. Foss, 19 Me. 335; 36 A. D. 755.  
204. Arnot v. Coal Co., 68 N. Y. 558; 23 A. R. 190.  
205. Skinner v. Henderson, 10 Mo. 205.  
b. *Defendant in default.* (K. T. Ch. v, § 1.)  
206. Troewert v. Decker, 51 Wis. 46; 37 A. R. 808.  
207. Liness v. Hesing, 44 Ill. 113; 92 A. D. 152.  
208. Morgan v. Groff, 5 Den. 364; 49 A. D. 273. (Overruled in 4 Barb. 524.)  
209. Thompson v. Williams, 58 N. H. 248; 2 K. 59.  
210. Brown v. Timmany, 20 Oh. 82.  
211. Smith v. Bromley, 2 Doug. 696; 2 K. 507.  
212. Hentig v. Staniforth, 5 M. & S. 122; 2 K. 5.  
213. Smart v. White, 73 Me. 332; 40 A. R. 356.  
214. Louisiana v. Wood, 102 U. S. 294.  
215. Smith v. Blachley, 188 Pa. 550; 68 A. S. R. 887; 41 Atl. 619.  
216. McMullen v. Hoffman, 174 U. S. 639; 19 Sup. Ct. 839.  
217. Lemon v. Grosskopf, 22 Wis. 427; 99 A. D. 58.  
218. Baldwin Bros. v. Potter, 46 Vt. 402; Huffcut's Cas. Agency, 186.

**VIII. Breach of contract.**

a. *Breach by plaintiff.* (K. T. Ch. iv, § 1.)  
219. Feeney v. Bardsley, 66 N. J. L. 239; 49 Atl. 443.  
220. Norwood v. Lathrop, 178 Mass. 208; 59 N. E. 650.  
221. Parcel v. McComber, 11 Neb. 209; s. c. note 35 A. R. 476.  
222. Catlin v. Tobias, 26 N. Y. 217; 84 A. D. 183; 2 K. 169.  
223. Saunders v. Short, 58 U. S. App. 689; 86 Fed. 225.  
224. Steeples v. Newton, 7 Ore. 110; 33 A. R. 705.  
225. Hildebrand v. Art Co., 109 Wis. 171; 53 L. R. A. 826; 85 N. W. 268 (only 7 c of the head-note and corresponding place in the opinion).  
226. Walsh v. Co. 88 App. D. 477.  
227 Kelly & Bragg v. Bradford, 33 Vt. 35.  
b. *Breach by defendant.* (K. T. Ch. v, § 4.)  
228. Derby v. Johnson, 21 Vt. 17; 2 K. 113; H. & W, 568.  
229. Wellston Coal Co. v. Franklin Co. 57 Oh. 182; 48 N. E. 888.  
230. Missouri Co. v. Carmody, 72 Mo. App. 534 (only the point on p. 538).

231. Porter v. Dunn, 61 Hun. 310; 40 N. Y. S. R. 776, 16 N. Y. Suppl. 77.
232. Hudson v. Hudson, 87 Ga. 678; 27 A. S. R. 270; 13 S. E. 583.
233. De Montague v. Bacharach, 181 Mass. 256; 63 N. E. 435.
234. Skudera v. Ins Co. 17 Misc. 367; 39 N. Y. Supp. 1059.

**IX. Impossibility of performance.** (K. T. Ch. iv, § 3; Ch. v, § 3.)

235. Appleby v. Myers, L. R. 2 C. P. 651; 36 L. J. C. P. 331; 16 L. T. 669; 2 K. 192.
236. Siegel, Cooper & Co. v. Eaton & Prince Co., 165 Ill. 550; 46 N. E. 449.
237. Huyett Co. v. Chicago Co., 167 Ills. 233; 59 A. S. R. 272; 47 N. E. 384.
238. Butterfield v. Byron, 153 Mass. 517; 25 A. S. R. 654; 12 L. R. A. 571; 27 N. E. 667.
239. Jones v. Judd, 4 N. Y. 411; 2 K. 215.
240. Wolf v. Howes, 20 N. Y. 197; 75 A. D. 388.
241. Lord v. Wheeler, 1 Gray 282; 2 K. 218.
242. Angus v. Scully, 176 Mass. 357; 79 A. S. R. 318; 57 N. E. 674; 49 L. R. A. 562.
243. Niblo v. Binsse, 3 Abb. Ct. App. 375; 1 Keyes, 476; 2 K. 224.
244. Griggs v. Austin, 3 Pick. 20; 15 A. D. 175; 1 K. 537.
245. Shear v. Wright, 60 Mich. 159.
246. Pinkham v. Libby, 93 Me. 575; 49 L. R. A. 693; 45 Atl. 823.
247. Chandler v. Webster [1904], 1 K. B. 493; 90 L. T. R. 217; 52 W. R. 290; 20 T. L. R. 222.
248. Elliott v. Crutchley [1904], 1 K. B. 565; 20 T. L. R. 286.

**B. Considered with reference to the law of tort.**

**I. Waiver of tort.** (K. T. Ch. iii.)

- a. *In general.* (K. T. pp. 159, 160.)
249. Ware v. Percival, 61 Me. 391; 14 A. R. 564.
250. Cooper v. Cooper, (case 59 above.)

Must be unjust enrichment. (K. T. pp. 160 *et seq.*)

251. Patterson v. Prior, 18 Ind. 440; 81 A. D. 367.
252. Thompson v. Bronk, 126 Mich. 455; 85 N. W. 1084.
253. Limited Inv. Co. v. Assoc. 99 Wis. 54; 74 N. W. 633.
254. Brundred v. Rice, 49 Oh. 640; 34 A. S. R. 589; 32 N. E. 169.

Must plaintiff's estate have been diminished? (K. T. pp. 163 *et seq.*)





255. Phillips v. Homfray, 24 Ch. D. 439; 49 L. T. R. 5; 32 W. R. 6; 1 K. 43.

256. Schillinger v. U. S., 155 U. S. 163; 15 Sup. Ct. 85.

257. McSorley v. Faulkner, 18 N. Y. Suppl. 460; 45 N. Y. S. R. 678.

258. Brown v. Brown, 40 Hun, 418.

Amount received must be ascertainable. (K. T. p. 173.)

259. Budd v. Hiler, 3 Dutch. 43. (27 N. J. L.)

Must money have been received? (K. T. p. 173.)

260. Kidney v. Persons, 41 Vt. 386; 98 A. D. 595.

Measure of recovery. (K. T. p. 183.)

261. West. Assur. Co. v. Towle, 65 Wis. 247; 26 N. W. 104.

Joint tortfeasors. (K. T. p. 208.)

262. Terry v. Munger, 121 N. Y. 161; 18 A. S. R. 803; 24 N. E. 272.

Joint injured parties.

263. Gilmore v. Wilbur, 12 Pick. 120; 22 A. D. 410.

b. *Particular applications.*

Fraud.

264. Crown Cycle Co. v. Brown, 39 Ore. 285; 64 Pac. 451.

Money procured wrongfully and passed to innocent holder.

265. Newhall v. Wyatt, 139 N. Y. 452; 54 N. Y. S. R. 708; 34 N. E. 1045; 36 A. S. R. 712.

266. Nassau Bank v. Bank, 159 N. Y. 456; 54 N. E. 66.

267. Alabama Bank v. Rivers, 116 Ala. 1; 67 A. S. R. 95; 22 So. 580.

268. State Bank v. Payne, 56 Ill. App. 147.

269. Hudmarch v. Hoffman, 127 Pa. 284; 4 L. R. A. 368; 14 A. S. R. 842; 18 Atl. 14.

270. Zink v. Express Co. 72 Ill. App. 605.

Trespass to goods.

271. Fanson v. Linsley, 20 Kan. 235 (only p. 239).

Trespass to lands.

272. Hurley v. Lameraux, 29 Minn. 138; 12 N. W. 447.

273. National Co. v. Bush, 88 Pa. 335.

274. Downs v. Finnegan, 58 Minn. 112; 59 N. W. 981; 49 A. S. R. 488.

275. O'Conley v. Natchez, 1 S. & M. 31; 40 A. D. 87.

Official fees received by usurper.

276. Glascock v. Lyons, 20 Ind. 1; 83 A. D. 299.

277. Stuhr v. Curran, 44 N. J. L. 181; 43 A. R. 353.

II. *Contribution between joint wrongdoers.* (K. T. pp. 408, 409.)

278. Churchill v. Holt, 131 Mass. 67; 41 A. R. 191.

279. Armstrong Co. v. Clarion Co. 66 Pa. St. 218; 5 A. R. 368.

C. Considered with reference to obedience to legal mandate.

I. Compulsion by legal mandate.

a. Recovery of money paid after action begun. (K. T. Ch. x, § 1.)

280. Moore v. Fulham [1895], 1 Q. B. 399; 43 W. R. 277; 71 L. T. 862.
281. Chandler v. Sanger, 114 Mass. 364; 19 A. R. 367; 2 K. 385.
282. Turner v. Barber, 66 N. J. L. 496; 49 Atl. 676.
283. Gould v. McFall, 118 Pa. 455; 4 A. S. R. 606; 12 Atl. 336.
284. Walker v. Ames, 2 Cow. 428.
- 284a. Teasedale v. Stoller, 133 Mo. 645; 34 S. W. 873.
285. Fuller v. Shattuck, 13 Gray 70; 74 A. D. 622.
286. People's Bank v. Heath, 175 Mass. 131; 78 A. S. R. 481; 55 N. E. 807.

b. Recovery of money paid to prevent sale under process. (K. T. Ch. x, § 2.)

287. Jersey City v. Riker, 9 Vroom 225; 20 A. R. 386.
288. Union Ins. Co. v. Alleghany, 101 Pa. 250.
289. Rumford Works v. Ray, 19 R. I. 456; 34 Atl. 814.
290. Peyser v. Mayor, 70 N. Y. 497; 26 A. R. 624.
291. Preston v. Boston, 12 Pick. 7; 2 K. 406.
292. Parcher v. Marathon Co., 52 Wis. 388; 38 A. R. 745; 2 K. 429.
293. Whitney v. Port Huron, 88 Mich. 268; 26 A. S. R. 291.
294. Trimmer v. Rochester, 130 N. Y. 401; 29 N. E. 746.
295. Matter of Adams, 154 N. Y. 619; 49 N. E. 144.
296. Matter of McCue, 162 N. Y. 235; 56 N. E. 627.
297. Lauman v. Des Moines, 29 Ia. 310.

II. Mistake as to legal mandate. (See Mistake, A. 5, *supra*.)

D. Considered with reference to equity jurisdiction.

298. Adair v. Winchester, 7 G. & J. (Md.) 114.
299. Ramsdell v. Butler, 60 Me. 216.
300. Roberts v. Ely, 113 N. Y. 128; 22 N. Y. S. R. 185; 20 N. E. 606.
301. Turner v. Althaus, 6 Neb. 55 (1st point only.)
302. Amer. Bank v. Thalheimer, 29 App. D. 170; 51 N. Y. S. 813.
303. Minchin v. Minchin, 157 Mass. 265; 32 N. E. 164.
304. Williams v. Gibbes (case 29, above.)



















